

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15208 Teklemariam Haile, pursuant to 11 DCMR 3108.1 for a special exception under Section 2003 to change a nonconforming use from a grocery store to a grocery, deli and carryout on the first floor in an R-4 District at premises 1401 6th Street, N.W., (Square 479, Lot 815).

HEARING DATE: November 15, 1989
DECISION DATE: December 6, 1989

ORDER

FINDINGS OF FACT:

1. The subject property is located on the northeast corner of 6th and O Streets, N.W. The premise address is 1401 6th Street, N.W. and it is zoned R-4.

2. The subject lot is rectangular in shape. It has a width of approximately 25 feet and a depth of approximately 42 feet. The lot is improved with a two-story brick structure built in 1900.

3. The neighborhood is developed with a variety of land uses. The John F. Kennedy Recreation Center is located directly east of the site. Mid and high-rise apartment buildings (e.g., Gibson Plaza, Grace McCollough Canaanland) and row dwelling are the predominant residential structures in the vicinity of the subject site. The historic O Street Market complex which includes the restored market and a new Giant supermarket is located one block west of the site in a commercially zoned area. This commercial area extends from Mount Vernon Square to Rhode Island Avenue, N.W. The Shaw Metrorail Station is under construction three blocks northwest of the subject site at 7th and R Streets N.W.

4. Presently, the applicant resides on the second floor of the subject property. The first floor has been used for commercial purposes since at least 1949. The most recent use of the first floor was as a grocery store. This use lasted approximately 17 years. Currently, the first floor is vacant.

5. The applicant proposes to lease the property to a tenant who will operate a delicatessen/carryout and grocery store. The carryout will sell foods prepared on the premises. No seating or other accomodations will be made available for consumption of the food on site. A portion of the store will be devoted to the sale of grocery items. The store will operate seven days a week between 10:00 a.m. and 9:00 p.m. No more than four employees will work at the site. A trash dumpster will be located at the side of

the building. Trash collection will occur at least twice per week. Deliveries to the store will be limited to twice per week.

6. The applicant stated that the site is in an excellent location to serve the community. It is on the first floor of the structure and on a conspicuous corner in the neighborhood. He believes that the neighborhood deserves a facility like the one proposed and he stated that 85 percent of the customers will be area residents who will come to the store by foot.

7. The applicant informed the Board that he and his family live on the second floor of the structure. He stated, however, that operation of the store will not interfere with their living arrangements because the entrance to the second floor is at 513 O Street on the ground level of the same building, around the corner from the store's entrance.

8. The applicant is requesting a special exception from the provisions of 11 DCMR 2003 which provides, in pertinent part, as follows:

2003 CHANGING USES WITHIN STRUCTURES

- 2003.1 If approved by the Board of Zoning Adjustment as authorized in Section 3105 through 3108, a nonconforming use may be changed to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, subject to the conditions set forth in this section.
- 2003.2 The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300') in all directions from the nonconforming use.
- 2003.3 The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.
- 2003.5 In Residential districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

9. The Office of Planning (OP), by memorandum dated November 8, 1989, recommended conditional approval of the application. OP noted the location and proposed use of the site. OP stated that

the property is located in an R-4 District which permits matter-of-right development of residential uses (including detached, semi-detached, and row single-family dwellings and flats) with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and maximum height limit of three stories/40 feet.

OP stated that the applicant is proposing to expand the line of edible food items sold by the grocery store to include hot and cold sandwiches, hot dogs, hot beverages, hamburgers and cooked chinese food. The food will be prepared on the premises but it will not be consumed at the site.

OP stated that the ground floor of the building has been used for retail purposes prior to enactment of the 1958 Zoning Regulations. Although the convenience store is currently unoccupied, the nonconforming use of the structure has not expired.

10. At the time of the OP report the applicant informed OP that about 90 percent of the persons who would patronize the convenience store reside in the immediate neighborhood and would be walk-in customers. The applicant indicated to OP that the proposed days and hours of operation would be Monday through Sunday, 10:00 a.m. to 8:00 p.m. Also, three full time staff would operate the store. At the time the OP report was prepared, the applicant had not selected a trade name for the store. The applicant was also awaiting issuance of a Class B liquor license.

OP stated that the trash receptacle that would be used for the convenience store was not in place when the site visit occurred. OP was therefore unable to determine how the storage and disposal of waste materials would be handled.

OP was of the opinion that the proposed store has a key characteristic of a neighborhood facility, that is, the majority of the patrons reside in the immediate neighborhood.

Finally, OP stated that the proposed use of the building will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighborhood properties. OP recommended approval of the application subject to the following conditions:

- a. The grocery, deli and carryout use of the building shall be limited to the first floor only.
- b. The number of employees should not exceed five persons.
- c. The facility's hours of operation should not exceed 8:00 a.m. to 9:00 p.m.

- d. Adequate provision should be made for the placement of a trash dumpster and the pick-up of trash.
- e. No seating shall be provided on the premises.

11. Advisory Neighborhood Commission (ANC) 2C, by letter dated November 3, 1989 and through testimony, expressed its support for the application. The ANC representative testified that the neighbors in the community want the business to operate at this location. ANC 2C expressed a concern about the drug problem in the area. The ANC gave three conditions for its support.

- a. The public telephones should be removed from the interior and exterior of the property to prevent their use for drug transactions.
- b. The sale of alcoholic beverages should be prevented.

12. Responding to the concerns raised by ANC 2C, the Board finds that the public telephone was removed from the exterior of the premises on October 31, 1989. Also, the Board finds that the hours of operation shall be from 9:00 a.m. to 10:00 p.m. The issue involving the sale of alcohol is not within the jurisdiction of the Board.

13. Three neighbors testified in opposition to the application. The first neighbor, residing at 1411 6th Street, N.W., was concerned that the ANC was misled about who would actually be operating the store. He noted that the tenant, rather than the owner would operate the business. This neighbor pointed out the drug problem that existed in the area when the phone was in place. He also expressed disappointment with the applicant's failure to clean up the property adjacent to the subject site.

14. Another neighbor, residing at 1405 6th Street, N.W., stated that he opposed the proposed use in principle. He stated the store tends to attract and encourage a type of drug activity, loitering and trash. He emphasized the importance of having the tenant/operator take responsibility for the maintenance of the property and invest in the property. Also, in his view, the applicant must take responsibility when the tenant fails to adhere to the lease. He addressed a number of other issues as well. They are:

- a) The applicant should agree not to install video machines in the store;
- b) Venting of the fume from the store should be handled so as not to negatively affect adjacent and nearby neighbors.

- c) The applicant should ensure that the store will operate within the hours approved.

15. A resident of 1411 6th Street, N.W. indicated that he supports the statement made by the other opposing neighbors. He stated that the residents and church in the 1400 block of 6th Street have all tried maintain their properties well. They have had to pick up needles and other types of trash. In his view, the proposed store will be an eyesore for the community.

16. In response to some of the issues raised by the Office of Planning and opposing neighbors, the applicant testified that he has cleaned up the property since he purchased it. He has also renovated property. He stated that the cluttered property next to the site does not belong to him. He further stated that his tenant's obligation to keep the property clean will be spelled out in the lease. The applicant testified that a trash dumpster will be located outside at the side of the building.

With regard to ventilation, the applicant stated that the ventilation system will installed in compliance with the applicable D.C. government code.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to change a nonconforming use from a grocery store to a grocery store, deli and carryout on the first floor of a structure located in an R-4 district. The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of Section 2003.

The Board concludes that the applicant meets the standards for granting the requested special exception. The Board concludes that the existing grocery store use is first permitted as a matter-of-right in a C-1 District. Therefore the requirements of Sub-section 2003.1 are met.

The Board believes that by removing the public telephone, the applicant has minimized the likelihood of drug activity occurring at the site. The Board further believes that because of the carryout nature of the grocery store/deli, the proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with the Zoning Regulations. (Sub-section 2003.2).

The Board concludes that the proposed use will not create any deleterious external effects. (Sub-section 2003.3).

The Board concludes that the subject property is located in a residential district and that because the majority of the patrons will be community residents, the proposed store is considered a neighborhood facility (Sub-section 2003.5).

In light of the foregoing, the Board concludes that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not tend to adversely affect the use of neighboring property.

The Board has accorded ANC 2C the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application hereby GRANTED, SUBJECT to the following CONDITIONS:

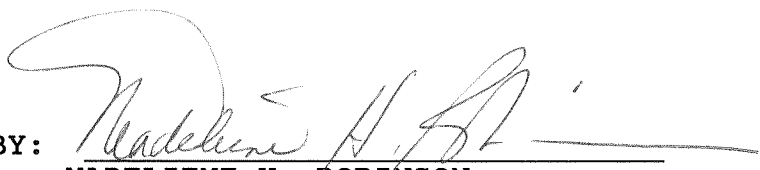
1. Approval shall be for a period of THREE YEARS.
2. The hours of operation shall not exceed from 10:00 a.m. to 9:00 p.m., seven days per week.
3. The number of employees shall not exceed four.
4. Trash pickup shall occur at least twice weekly.
5. Deliveries shall be limited to twice per week.
6. There shall be no public telephone installed on the exterior of the premises.
7. Any signage on the premises shall be flush against the wall and non-illuminated. No neon signs shall be visible on the exterior of the structure.
8. The applicant shall provide a trash receptacle near the entrance to the facility. The applicant shall police the outdoor area adjacent to the facility daily to keep the area free of refuse and debris.

VOTE: 4-0 (Charles R. Norris, Maybelle Taylor Bennett, Paula L. Jewell and William F. McIntosh to grant; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

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ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

FEB 25 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15208Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15208

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on FEB 25 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Teklemariam Haile
513 O Street, N.W.
Washington, D.C. 20001

Kevin Schiedel
1405 6th Street, N.W.
Washington, D.C. 20001

Terry Perry
1411 6th Street, N.W.
Washington, D.C. 20001

Thomas Bay
1411 6th Street, N.W.
Washington, D.C. 20001

Clifford W. Waddy, Chairperson
Advisory Neighborhood Commission 2-C
1200 S Street, N.W., #201
Washington, D.C. 20009

A handwritten signature in cursive script, reading "Madeliene H. Robinson", written over a horizontal line.

MADELIENE H. ROBINSON
Acting Director

DATE: FEB 25 1992

15208Att/bhs